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91-370

Supreme Court, U.S.

FILED

AUG 1 1991

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

EDGAR PERRY,

petitioner,

vs.,

STEVE SCHULZE,

respondent.

PETITION FOR A WRIT OF HABEAS CORPUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Edgar Perry, per se

2540 Market Avenue

San Pablo, California 94806

-4542

Telephone (415) 234-1592



QUESTIONS PRESENTED

The only issues presented in this case are issues of law:

- A. whether the lower court erred in not hearing the appeal, eventhough Title 21, U. S. Code 881 was well visible as the argument, let the matter stand as an *enrico* case, allow special privileges to a party with an attorney against another without one, not hearing or refunding fee to petitioner?
- B. whether the lower court contradict itself in two different orders of its own and at the light of *Jackson vs. Arizona*, 885 F. 2d 339, 340 (9th. Circ. 1989)?
- C. whether the lower court erred in disregarding petitioner's motion for restrain against the respondent for death threats, impairing future witnesses safety in court, condemning people in this country to live with drug trafficking next door and death threats to people who D.A.R.E. to come to court?



TABLE OF AUTHORITIES CITED

Title 21 U. S. Code 881 (a) 1 thru 6, (c),
(d), (e)

U. S. v. One 1973 Volvo, D. C. Texas 1974,
377 F. Supp. 810

U. S. v. Ramey, D. C. Tenn. 1980, 490 F.
Supp. 990

U. S. v. Baldwin, 621 F. 2d. 251

U. S. v. Jabara, 618 F. 2d. 1319

U. S. v. Harrison, 628 F. 2d. 929

Jackson v. Arizona, 885 F. 2d. 639, 640 (9th.
circuit)

New legislation enacted by Congress and signed
into law by the president, too much new to be
cited.



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A. This case would provide this court with an opportunity to order drug dealers out of communities not willing to have them or by fear that another private citizen will come to court.

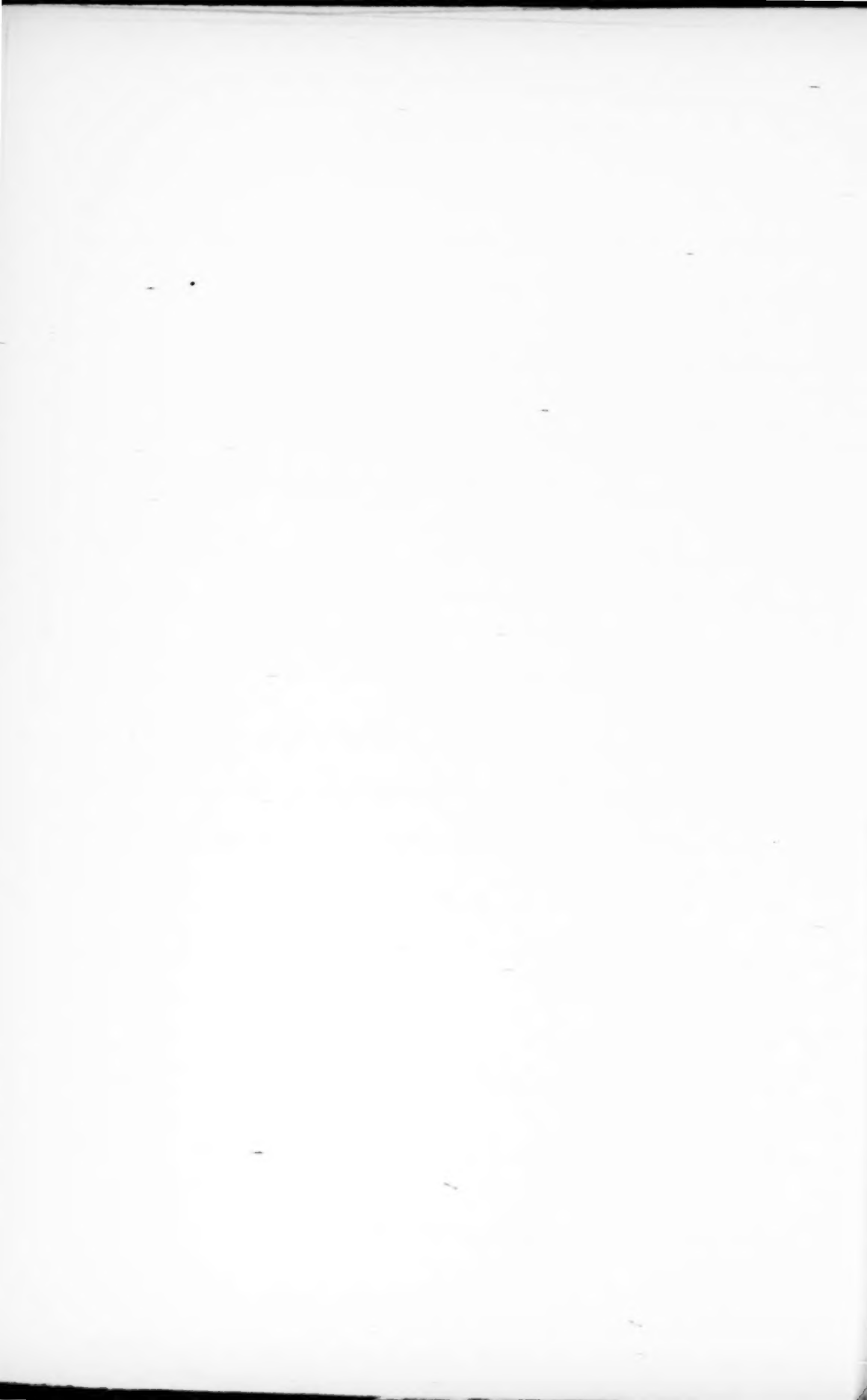
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Appendix A

Order, United States Court of Appeals for the Ninth Circuit, No. 91-15018, filed July 17, 1991
same as above, filed May 31, 1991

Appendix B

Order, United States District Court, Northern



District of California, No. C 90-3447-YRW, filed April 16, 1991.

Appendix C

Abelardo Herrera's Affidavit in support of a writ of certiorari

Appendix D

San Pablo Police Report

Municipal Court of California, County of Contra
proceedings
Costa and County's Probation Officer Report.



No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

EDGAR PERRY,

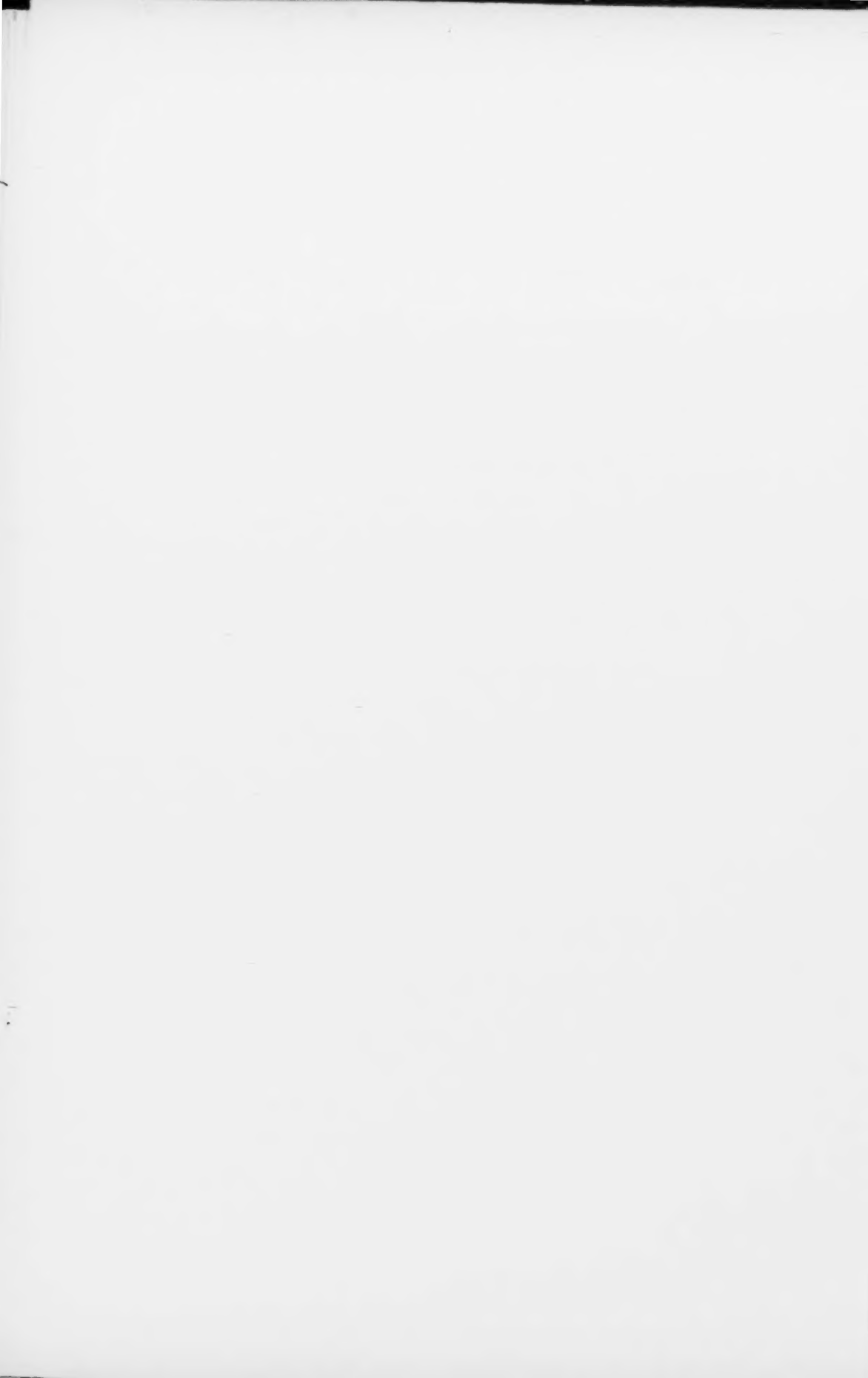
petitioner,

vs.,

STEVE SCHULTZE,

respondent.

petitioner, Edgar Perry, respectfully
prays that a writ of certiorari be issued
to review the order of the United States Court
of Appeals for the Ninth Circuit entered in the
above entitled cause on July 17, 1991.



I.

OPINION BELOW

The two different orders from the court of Appeals are attached as Appendix A, as well as the order from the district court as Appendix B

II.

JURISDICTION

The jurisdiction of this court is invoked pursuant to Title 21, U. S. Code 881(a) (1 through (e)), (c), (d), (e) and the U. S. Constitution, #380 other personal property damage, #470 racketeer influenced and corrupt organizations, as well as witnesses safety coming to federal courts' regulations.

III.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitution of the United States whereas people have "the right to pursue happiness in life".

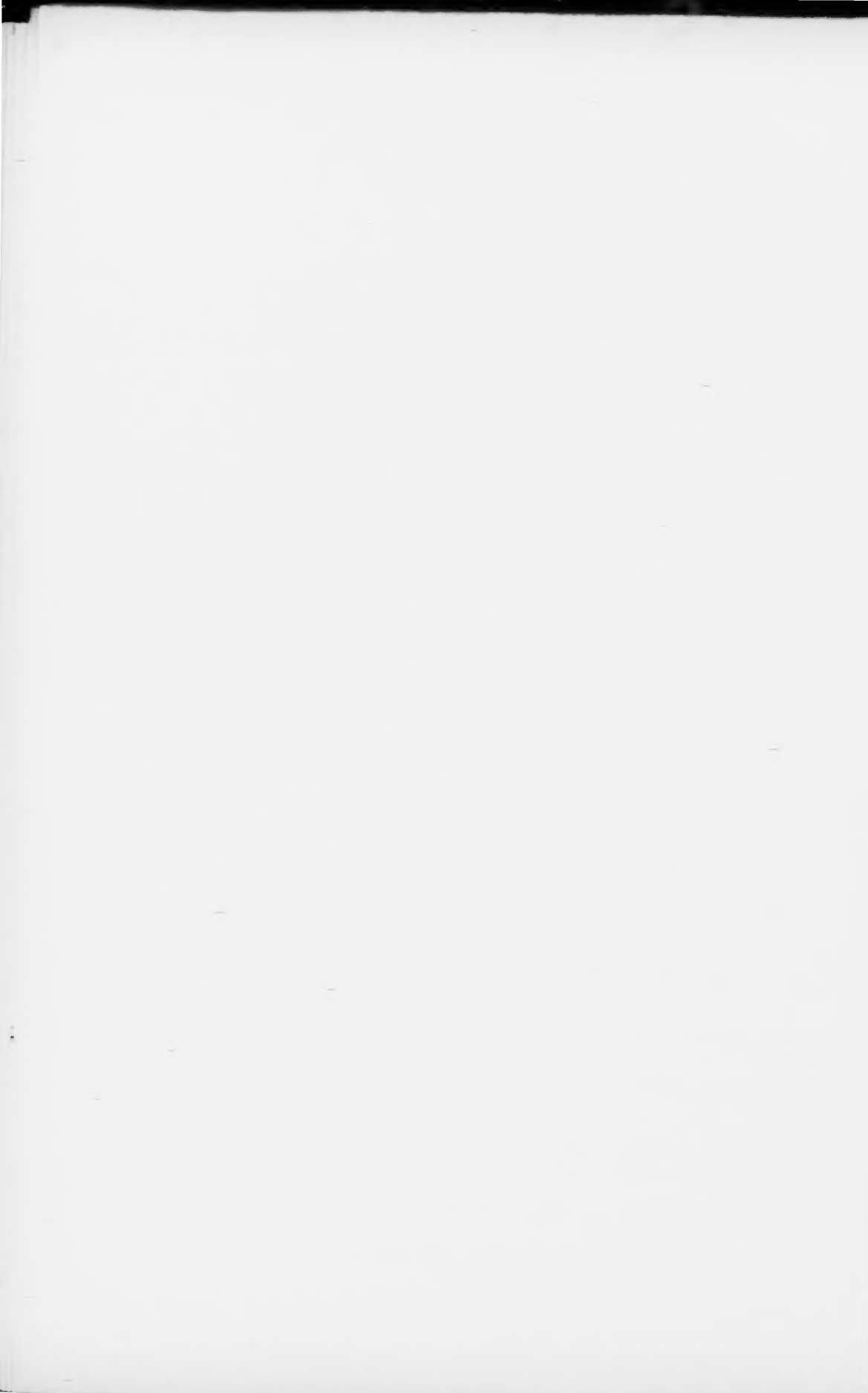


STATEMENT OF FACTS

This is not, as the district court labelled it, an ex parte case, but rather an action under title 21, U. S. C. 881 (a) (1 through 3, 4, (d), (e) and recent mandate of Congress, which the president signed and passed into law about narcotics regulation, as well as legislation about victims and witnesses coming to court.

Petitioner suffered extensive property damage, documented in official police and local municipal court's records, to force him to move out of his home and respondent himself menaced several times to kill petitioner. Her report introduced into evidence in district court by petitioner) after the case is over, because of petitioner coming to court.

Respondent rents a small cottage by the number 1658 (according to the records of the Contra Costa County Assessor's Office, in Martinez, California, lately changed by renters to 1651), on the 26th. street of the city of San Pablo, California, which for the last six odd years became a so called "crack house",



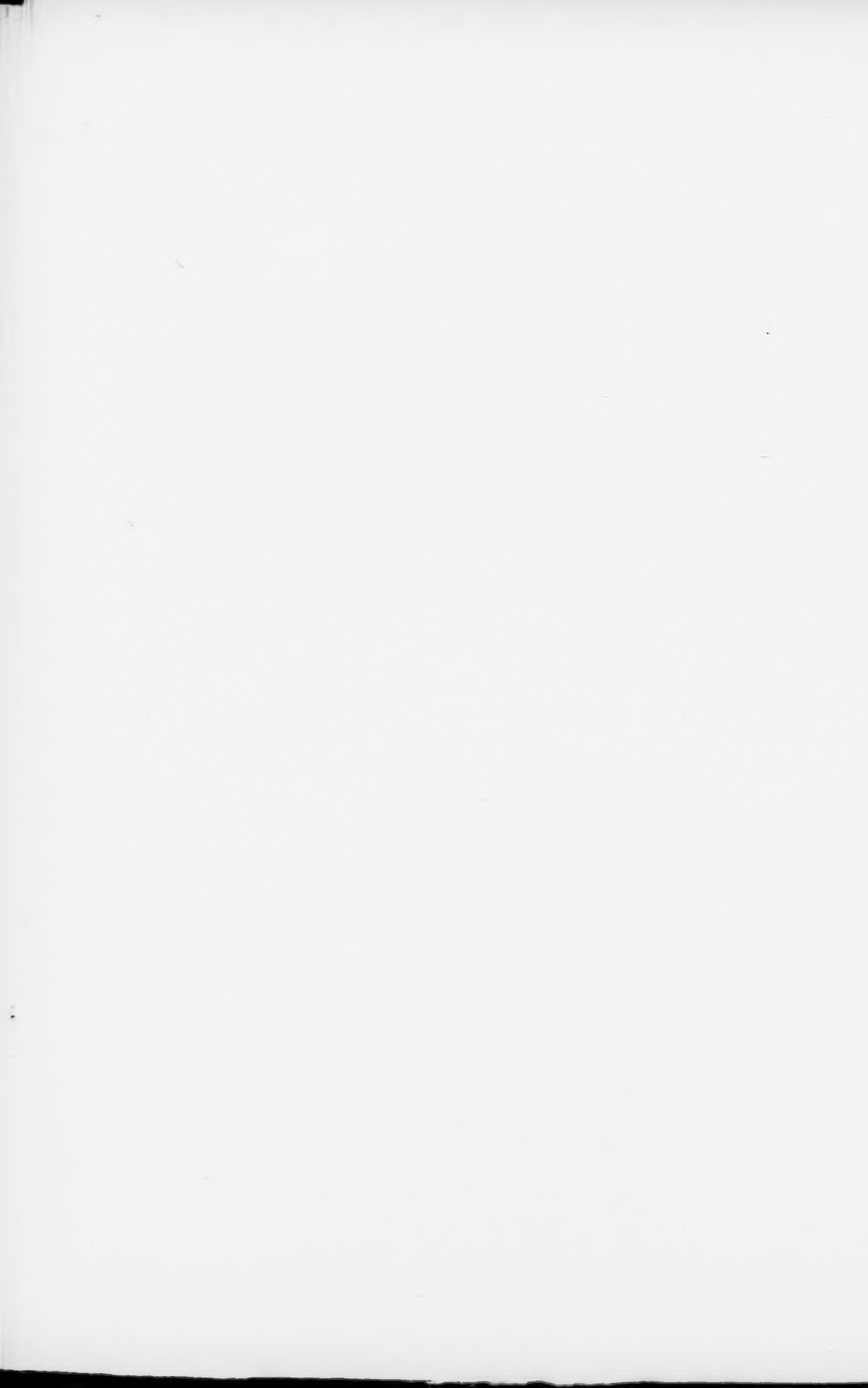
by dealing and consumption of drugs, about which said respondent has been warned by neighbours until respondent got tired and told the phone company to disconnect the phone, not to be bothered anylonger; previously, in concerted action said neighbours alerted the city and county's agency to the activities at said dwelling, in consequence of which the rental license was suspended for awhile: a previous dweller of said address by the name of Kevin Williams offered to sell drugs to the owner of the property located across the street from 1658, but Mr. Herrera, of 1648 26th. Street, declined the offer (Affidavit to the effect appear as Appendix C).

However the lower court had jurisdiction over the respondent and Title 21, U. S. C. 881, it choose in tis order of July 17th. 1991 to dismiss the appeal and deny referral to this court, thus condemning people in petitioner's community to live under the yoke of drug trafficking and it is to be feared such to extend to this country wide. As of this writing such has been verified from smaller to a much higher scale in petitioner's community



(the new dweller, just out of jail will see to that), in a fleury of day and night activity.

The lower court contradicts itself: Its order of May 31st. 1991(on Appendix A) says that petitioner may not appeal because the district court had granted petitioner's motion for judge disqualification, thus the lower court had no jurisdiction over the case, which is wrong; later, by order of July 17th. 1991, it concluded that petitioner "seeks to appeal a district court order referring his "recusal", apparently to mean refusal, motion to another judge for a ruling", which also is wrong; the motion was for judge disqualification and instead of granting it or denying it the honorable walker referred the motion to judge conti, both of the Northern California district court, for interpretation(of intent?); although the issue is very clear and the bad will of the lower court even more so and especially under the special circumstances(petitioner gave judicial notice to both courts below of the threats to his life, his home has a lea-



ky roof from the tree at the respondent's property, besides substantial damage inflicted upon petitioner's property, actions executed by respondent and rentees' agents to convince petitioner to move (as loudly voiced by present dweller to petitioner) long ago, as fashionable out west), petitioner prays this court to order this case concluded: To exercise its power to stop drug dealers from abridgeing people's constitutional rights to live in their own homes, according to mandate of the government of this country, both presidential and congressional, and as stated several times by this court. The majority of the people of this country above all need justice and cry for help in such matter, enough of drug trafficking is enough; at stake is the survival of the country herself and the drug dealers have to be curbed.

Appendix 5 contain copies of some official records from some of the renters of the dwelling in point: however, the contra costa county Government agencies informed petitioner records older than five years are no longer a-



available for having been destroyed by law and
"probation officer's report from Kevin Williams
are not possible to copy" (sic Hope Balderrault,
supervisor, Criminal Records, Superior Court,
telephone number (415) 646-4908, Martinez, Ca-
lifornia), the privacy or freedom of Informa-
tion Act ^{outstanding} or not; and petitioner points out
that to alleged shortages of manpower in both
the San Pablo Police Department and the San
Francisco Drug Enforcement Agency his request
of this case for narcotic abuses had been very
short lived (the San Pablo Police Department
had a patrol vehicle with a drug sniffing dog
for five minutes in a Sunday of May 1991 af-
ternoon, when there was nobody home, in front
of the dwelling); also, changes in carriers
of the narcotics from the dwelling in question
was observed by the neighbours; the Contra Costa
Sheriff's Department referred the investi-
gation back to the San Pablo Police Department
(due to said Sheriff's Department having its
hands full down in the other side of town with
people dealing drugs in the front of deputies);



The Washington, D. C., Main Office of the Drug Enforcement Agency referred petitioner's request for investigation to the regional office, in San Francisco, California, and the Office of the President referred the request to the Drug Enforcement Agency; and when the neighbours tried to do something physically were accused by the police of taking the law into their own hands and that neighbours had to give proof of drugs dealings and consumption to get a local "court order to search the place for drugs"; disregard for petitioner's phone calls for assistance notwithstanding (at once or twice the San Pablo Police Department re-routed his calls to the next police department allegedly because the dwelling is in the border line with Richmond by the dispatcher, who refused to send officers and to connect petitioner's call to the California Highway Patrol to report an accident in the Highway 880); also, the refusal of the San Pablo Chief of Police to upgrade the death threats from the respondent from a bad word

said in public to a california penal code section offense in the report in evidence in this case, so the county's district attorney would prosecute; the present dweller of the address in question by the name of Brian Lane Qualls has a minimum of seventeen cases in the local municipal court (of which the clerk told petitioner that she knew who he is "the brothers qualls are too well known in this department"; the other brother, living with the mother down the street, has a record at least that long); the previous dweller, by the name of Kevin Williams, has cases too old to be picked up to copy. More recently neighbours were contacted by a detective of the Richmond police department for a dweller at 1051 (ex-1058) who was involved with a stolen motorcycle to a suspect who pointed out said address to the detective after having been driven around by the detective for the purpose of identification. In the matter of the People of California vs. William (Kevin) the last confessed involvement with drugs to the probation offi-



cer in the refused to copy report to petitioner.

petitioner argues that respondent up to date formerly failed to give a single written answer in this case, as an off the record chamber's conference hardly may be construed as an answer, particularly the lower court sided with the respondent's attorney to give the case the "coup de grace" and petitioner's community aspirations for justice in this matter of illegal narcotics consumption (Mr. Liehman, next door to petitioner and signer of the declaration in evidence, knows of a previous tenant by the first name of Bruce, Hispanic last name unknown to petitioner) and dealings, as the instance of Kevin Williams trying to sell drugs to Mr. Herrera. Last minute appearance by an attorney for the respondent at a chamber's conference where petitioner is told by the district court he just lost the case is obvious for a motion for judge disqualification for prejudice; the district court was requested by petitioner to grant motion to let



another judge have the case or let it go to appeal, but instead the district court delayed the appeal and did not grant the motion for disqualification.

Respondent has to be held accountable for the outcome of the actions of his property, or emanating from, although he may argue not to be responsible for the actions of his rentees, but a "crack house" is definition not dependent on who makes it so.

If the police force is bad and not enough to enforce the law citizens will have to come to this court privately to pray for justice, although apologetic to further burden the court with another narcotics action.

Petitioner feels that from the damages to his property and psychological distress to his family (his eight years old daughter always ducks home not to be seen by the dwellers next door), not to mention lost hours from work from the nights, and there were too many to recall, dwellers would not let people sleep

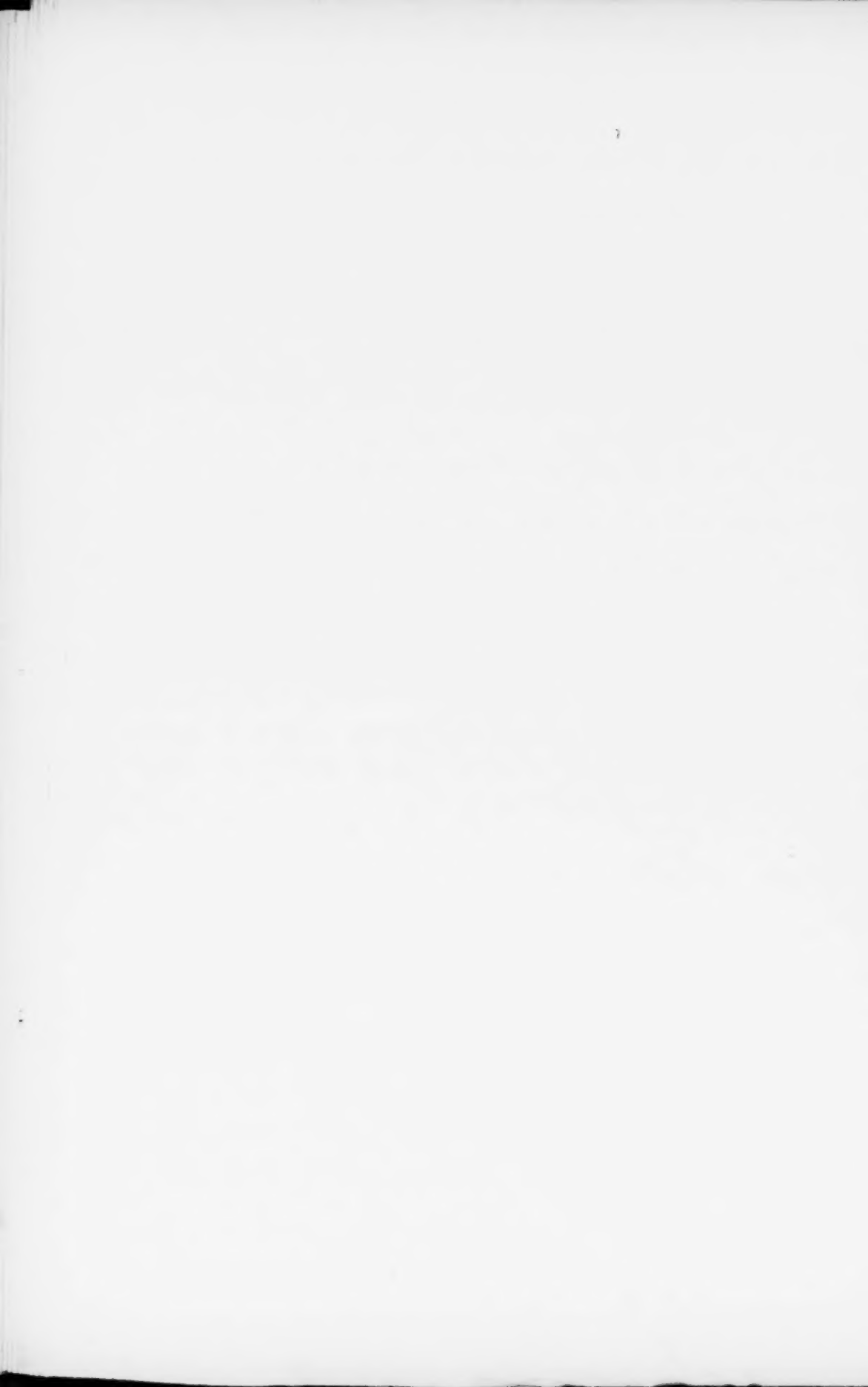


in the neighbourhood with their dealings, petitioner respectfully submits respondent owes him the sum of one hundred thousand dollars, which may be converted at the discretion of the court by government sale of the property (the small cottage might be given back to the respondent, who claims is in the business of real estate where he lives, Shasta county, two hundred miles away in California, so the neighborhood may be free of repeated performance of drug abuses all over again as so many times verified), which in its present runned down condition will not be worth such; a much better property across the street was acquired by Mr. Abelardo Herrera for that much.

V.

REASONS TO GRANT THE WRIT

- A. This case would provide this court with an opportunity to order drug dealers out of communities not willing to have them by fear that another private ci-



tizen will come to court.

As a point in case of this matter petitioner just learnt of a narcotic's "bust" in his neighborhood: 2599 Bush Street, in the adjacent city of Richmond, California; petitioner tried to get some paper work copies from the official agencies around but either because the case is too recent or, freedom of information or privacy acts notwithstanding, people would not reveal any information, even if the above address is in petitioner's block, or facilitate copies: petitioner contacted: 8/14/91, at 1:30 Sgt. Sanchua I. D. #0.2 of the San Pablo Police Department, at 3:10 Judy Parkinen, Office Manager, Contra Costa County District Attorney, Richmond; at 3:15 Diane Niedham, Supervisor, Search Warrant Section, County's Municipal Court (Bay District), Richmond, who confirmed a search warrant was issued but had not be returned for said address: at 4:15 the Richmond Police Department's vice section, Gail da Cruz, Secretary: at 4:35 West Net (Narcotics County's Task force for the West County's section with police officers from different departments in the area), nobody in

A crisis status has fallen upon certain areas of this country, notarioulsy in the san francisco Bay Area; the police force is not enough to enforce Title 21, U.S.C. 881(a); citizenery is willing sometimes to exercise its constitutional right to come to court to enforce it, but said citizenery needs the back up of the court to safely back up said enforcement and regain control of the communities.

VI.

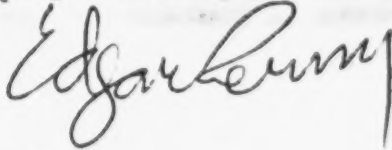
CONCLUSION

This case presents a paramount solution to drug dealers curbing and an opportunity to this court to give control back of communities to the citizenery by the enforcement of title 21, U. S. C. 881 (a) et al. This case has established a dangerous precedent which if not clarified, other lower courts might unwisely choose to adopt.

This Court here has an opportunity to
clarify also the rule of death threats to
witnesses coming to Court.

Dated: August 13th. 1991

Respectfully submitted,



Edgar Perry

2540 Market Avenue

San Pablo, California 94806-4540

Telephone (415) (510 after

9/2/91) 234-1392



APPENDIX A



filed

July 17 1991

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDGAR PERRI,

} no. 91-12010

Plaintiff-Appellant,

} DO# CV-90-03441-NEW

vs.

} Northern California

} (San Francisco)

STEVE SCHULTZE,

}

} ORDER

Defendant-Appellee.

}

Before: WALLA, Chief Judge, -KEZINSKI and TROTT,
Circuit Judges

Appellant seeks to appeal a district court order referring his recusal motion to another judge for a ruling. Such an order is neither final, nor an appealable collateral order. see Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949) (in order to be appealable, order must inter alia, conclusively determine disputed question). Accordingly, on May 31, 1991, appellant was ordered to show cause why his appeal should not be dismissed for lack of jurisdiction.

Appellant has timely responded to the order to show cause. However, he has failed to demonstrate that this court has jurisdiction



over the appeal. Therefore, the appeal is dismissed for lack of jurisdiction.

Appellant's request for (1) a refund for his docketing and filing fees and (2) referral of his appeal to the Supreme Court are denied.

Mocal 7/15/91

filed

May 31, 1991

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDGAR PERRY, } No. 91-15018
 })
plaintiff-Appellant, } DC# 97-90-03447
 } Northern District
vs., } (San Francisco)
 })
STEVE SCHULTZE, } ORDER
defendant-appellee.)

A review of the civil Appeals docketing statement and the district court order attached thereto indicates that the appeal is taken from an order granting the appellant's motion to disqualify the district court judge. Therefore, it appears that appellant has no standing to appeal because he was successful below. see Native Village of Tyonek v. Buckett, 890 F. 2d 1054, 1050 (9th. Circuit 1989).

Moreover, the granting of a motion to recuse a judge is not a final, appealable order. see In re General Antitrust Litigation (MDL No. 290), 873 F. 2d 1020, 1022-23 (9th. Cir.



1982). Therefore, it appears that appellate jurisdiction is lacking on this ground as well.

Within 14 days of the entry of this order, appellant shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellant chooses to show cause, appellee may respond within 10 days after service of appellant's memorandum.

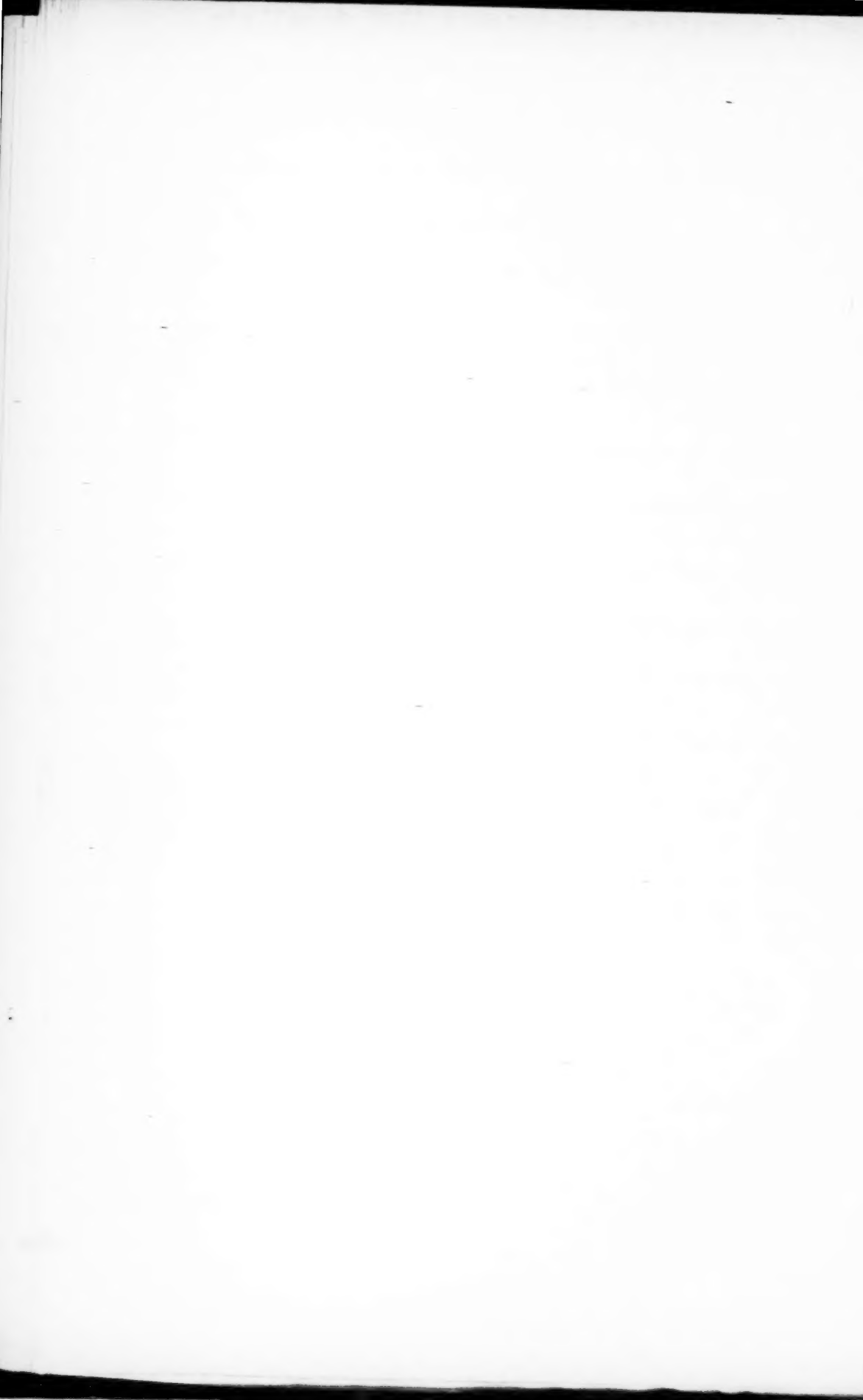
If appellant does not comply with this order, the appeal will be dismissed by the clerk under Ninth Circuit Rule 42-1.

The briefing schedule is suspended during the pendency of this order to show cause. If the appeal is not dismissed by the court, an order will be issued setting forth the due dates for the briefs.

FOR THE COURT:

Reg. Gerrity
Conference Attorney

5.23.91a(bs)/4,5



APPENDIX B



filed

April 16, 1991

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDGAR PERRY,

Plaintiff,

v.

STEVE SCHULTZE,

Defendant.

No. C-90-3447-VW

ORDER

On March 13, 1991, plaintiff filed a motion for disqualification. Local rule 205-3 provides that "(w)henever an affidavit of bias or prejudice directed at a judge of this court is filed pursuant to 28 U.S.C. § 144, and the judge has determined that the affidavit is neither frivolous nor interposed for delay, the judge may refer the determination of the sufficiency of the affidavit to another judge to be selected at random. The court construes plaintiff's motion to be an affidavit alleging bias.

Accordingly, the clerk of the court shall se-

lect at random another judge to consider the
merits of the motion.

IT IS SO ORDERED.

DATED April 15, 1991

Vaughn W. Walker

United States District
Judge

Copies mailed to parties
of record

APPENDIX C



AFFIDAVIT IN SUPPORT OF A WRIT OF CERTIORARI

I, Abelardo Herrera, being first sworn, depose and say that in support of Edgar Perry's petition for a writ of certiorari in the superior court of the United States from the United States Court of Appeals for the Ninth Circuit (Action No. 91-15018) in the matter versus Steve Schultze presented to this court:

I live in my property at 1048 twenty six street, in the city of San Pablo, county of Contra Costa, state of California.

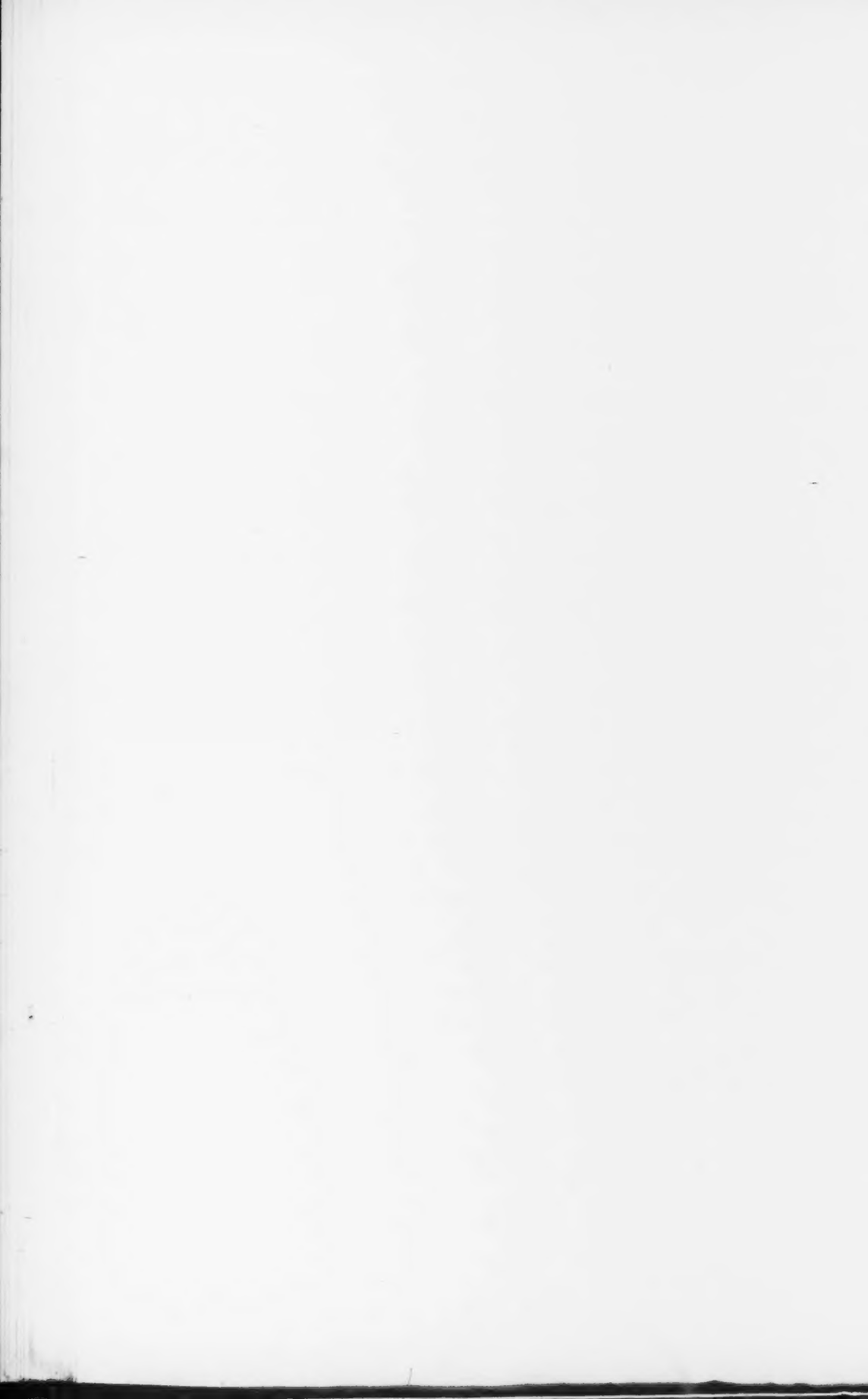
On or about June/89 I was approached by a Kevin Williams, then resident at the then number 1658 of the same city, county and state, nowadays changed to number 1651, for the purpose to sell me narcotics.

I understand that a false statement will subject me to penalties for perjury.

Dated: July 22nd. 1991

/s/ A Herrera

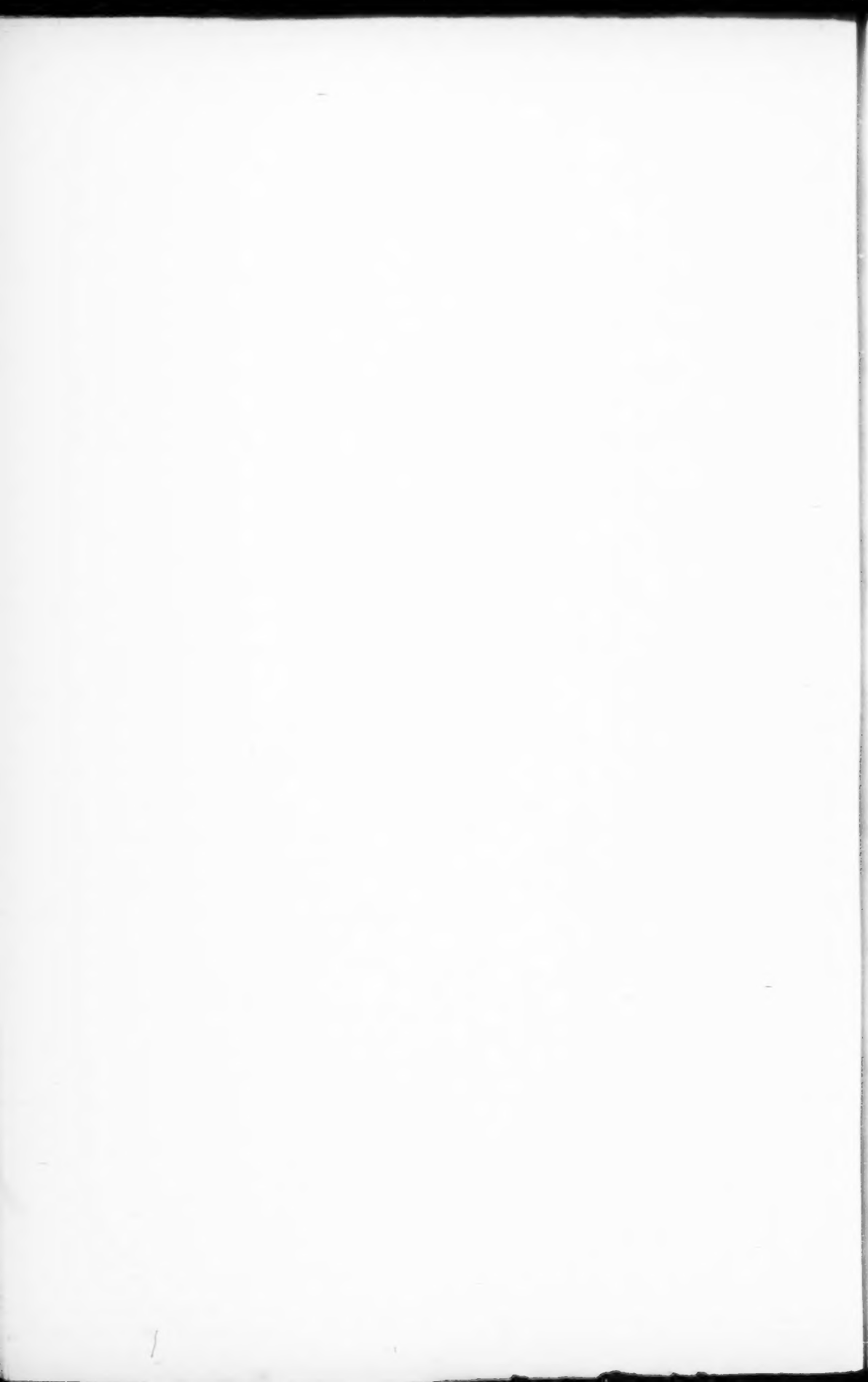
Abelardo Herrera



APPENDIX D



SAN PABLO POLICE DEPARTMENT		Case No. 90-8160					
# 5-Alvarado square		page 1 of 2					
san pablo, california 94806		refer other reports					
(415) 237-8706							
1	CRIME	code section 594 PC	crime Vandalism	classification 14.08.02	primary	secondary	other
Location (be specific)		date RPTD 7-790	occurred on/or between and	date 7-790	day sat	time 0820	
2540 Market Av. San Pablo							
Firm Name (at location)		0825					
code Name (Last, First, Middle)		Occupation	D.O.B.	Age	SXLM	LWHI 3BLK 50R	
VINP perry, Edgar			01-15-39	51	2F	X 2MTR 60th	
res. Address		City	Zip Code	res. phone			
2540 Market Ave. San Pablo		San Pablo	94806	234-1392			
Article Name Qty I. D. # Brand/Make or Model Name and Miscellaneous value							
I/D	Radio	I	None	unk	unk	Model numbers	rescription
						alk portable	..
						AM/PM	\$35.00
-1-							



5 N A T I V E I responded to a reported 9b9 PCin progress. Upon arrival I contac-

tacted v(perry)Ifo his residence.
(v) told me his neighbor s(Qualls) broke his radio which was hanging on a window gate in the backyard. (v) said ne saw (s) break the radio with a pole.(v) stated ne has had numerous problems with (s) for the past 3 yrs.

I contacted (s) at his residence, (s) denies breaking the radio and stated (v) placed his radio in the back yard and turned the volume as loud as it goes.

(v) stated ne will go to the DA's Office after 5 working days to file a complaint against (s).

The above radio is an unk brand and Mod #. The radio had been smashed by an unk object.

Request this case be sent to the DA's Office per (v) request to prosecute.

6 Crimes against elderly	7 Domestic violence	8 Weapon involved
Yes XNo age(s) _____	Yes YNo	Yes YNo
9 case status _____	Other routing XDA	Entered by VI 7-10-90
_____	In# 8751 date 7-7-90	Reviewed by 1---set In#181



District Attorney.

count number five against property of Karen Smith.

I think what I heard was that the defendant was driving away with a 12-speed bicycle?

Mr. Oda: Yes, your Honor.

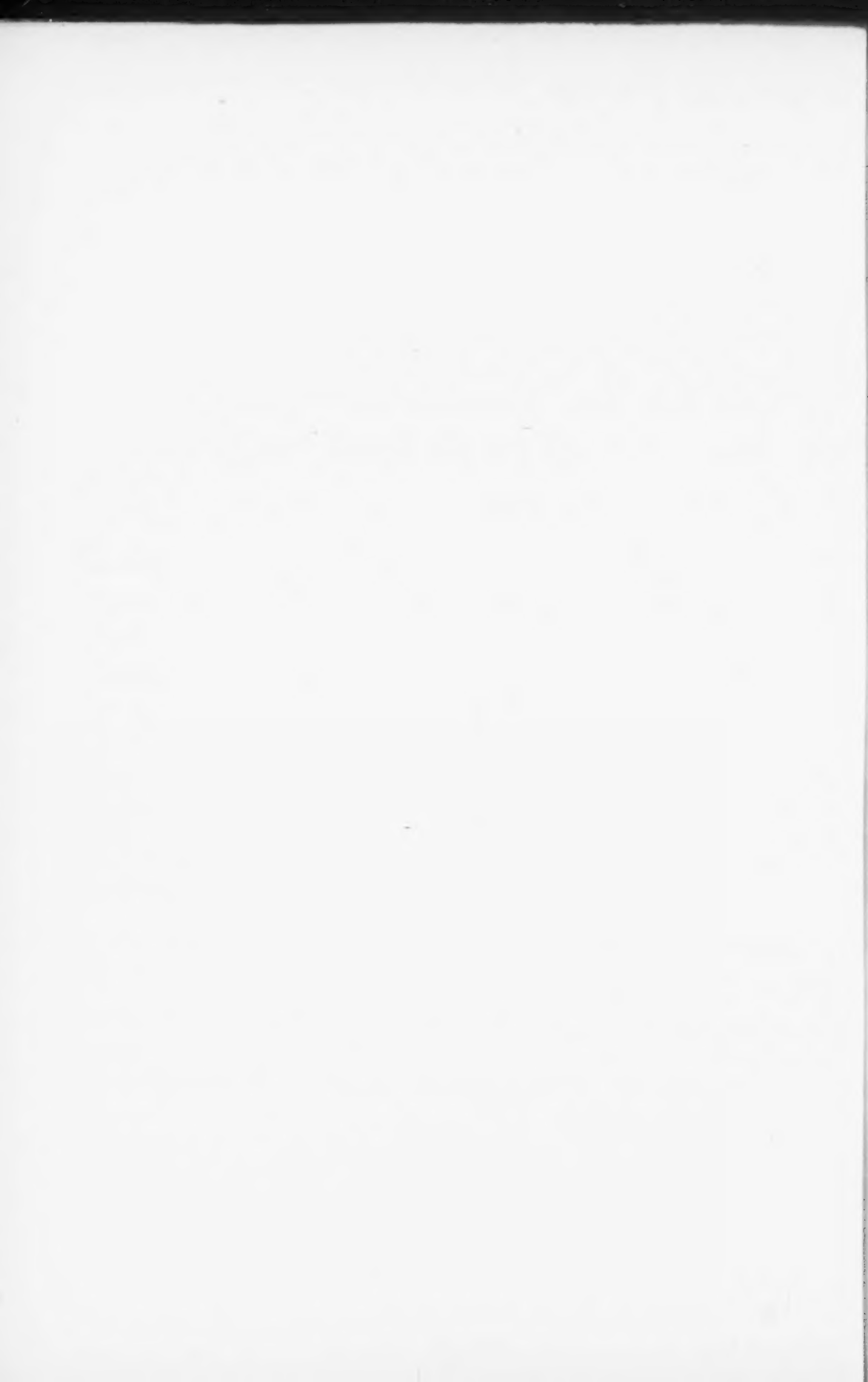
The court: did you introduce any evidence beyond his driving away with a 12-speed bicycle in that matter?

Mr. Oda: well, the 12-speed bicycle is one of the itemstaken, I believe.

The court: I'm aware.

Mr. Oda: Okay. Also, he named some four or five individuals that were involved in that burglary. He denied entering but I would submit that the joint effort of these four or five individuals in entering and also taking property from the scene would make him guilty of this as well.

The court: Anything further?



Mr. Oda: Nothing. Submitted.

The court: It appear to me there is sufficient cause to believe that the defendant, Kevin Williams, is guilty of the following offenses charged in the complaint: count one, violation of 459-460.1, first degree burglary; count two, 459-460.1, first degree burglary; count three, 459-460.1, first degree burglary; count four, 459-460.1, first degree burglary; count five, 496, receiving stolen property; and count six, 459-460.1, first degree burglary.

And I order him held to answer to the superior court of the state of California, in and for the county of Contra Costa.



To the department of corrections is recommended.

Therefore, in view of the information contained herein, and should guilt result on one or all of the charges noted, it is felt that a commitment to the department of corrections, and subsequent housing at the California Youth Authority, is warranted.

Respectfully submitted,

Gerald S. Buck, County Probation Officer

By: _____

Gregory J. D'Ottavio, Deputy Probation Officer

Approved: _____

Richard A. Galicura, Unit Supervisor

GJD:AL

Dictated: 4/6/84

Typed: 4/6/84

Read and considered: _____

Judge



Filed
Feb 27 1984

MUNICIPAL COURT OF CALIFORNIA, COUNTY OF CONTRA COST
Bay Judicial District
100 - 37th Street, Richmond, Ca. 94805

People of the state of California,
Plaintiff,
vs.,
Williars, Kevin,
Defendant.

ORDER HOLDING
TO ANSWER
Action No.
840580-5

It appears to me that the felony offense(s),
namely: violation of 459-460.1 PC counts 1 through
7 has/have been committed and that there is sufficient
cause to believe the defendant(s) Kevin
Williams guilty thereof, I order that the defendant
be held to answer to the same in superior
court of the state of California, county of Contra
Costa, and order that defendant(s), and each
of them, (if more than one), be admitted to
bail in the sum of \$10,000.00.

It is further ordered that defendant(s) appear
in said superior court on March 6, 1984 at 8:30



A. M.

dated: feb. 21, 1984

Judge

Allen L. Norris

(seal)

-lf-

CR-201

11-82/500